



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Peggy Wimberly Minier-Survivor Benefit Plan
Benefits for Former Spouse

File: B-232319

Date: March 23, 1990

DIGEST

Where a retired service member was ordered by a court in September 1984 to provide a Survivor Benefit Plan (SBP) annuity to his former spouse, and thereafter failed to properly and timely complete the election process, the former spouse was not entitled to an annuity because at that time the law required timely completion of the election process. However, if the former spouse later obtains a second court order enforcing the original one, which is issued on or after November 14, 1986, the effective date of an amendment to the SBP law permitting court ordered deemed elections, and which requires such an election, then the former spouse is entitled to an SBP annuity starting on the first day of the first month after a proper request for a deemed election is received by the service accompanied with a copy of second order.

DECISION

On July 20, 1987, the U.S. Air Force Accounting and Finance Center (Finance Center) denied a claim by the former spouse of a retired U.S. Air Force officer for a former spouse Survivor Benefit Plan (SBP) annuity. In accordance with the former spouse's request, the Finance Center then forwarded the matter to the Claims Group of this Office for consideration. The matter should be settled in accordance with this decision.

BACKGROUND

The record shows that Colonel Charles Wimberly entered military service on September 10, 1938, and married Peggy (Wimberly) Minier, on August 1, 1942. He retired on May 31, 1966, and on August 17, 1982, elected full coverage under the SBP for spouse only. Peggy Minier filed for divorce in the Superior Court of California, and after a hearing on July 5, 1984, by its Amended Judgment

048133 / 140923

of September 7, 1984, the court dissolved the marriage, retaining jurisdiction.

Colonel Wimberly voluntarily agreed to retain Peggy Minier as his Plan beneficiary. This is evidenced by oral statements made by his attorney during the court proceedings. As a result the court in its Amended Judgment of September 7th, indicated that the premiums for the Plan coverage should be taken from Peggy Minier's share of the military retired pay. The court also ordered that Colonel Wimberly "shall retain" Peggy Minier as his SBP beneficiary. Pursuant thereto, Colonel Wimberly on July 31, 1985 and Peggy Minier on September 5, 1985 voluntarily executed an Election Statement for Former Spouse Coverage under the Survivor Benefit Plan (AF Form 1581). The AF Form 1581 was received at the Finance Center on September 16, 1985, more than 1 year after the court's decree. Colonel Wimberly married Malinda Taylor sometime prior to July 31, 1985, and he died on July 17, 1987, after attempting a second Plan election, this time in favor of Malinda as his current spouse. The Air Force Finance Center refused to pay the benefits to the former spouse because the request for former spouse coverage had not been received by the Finance Center within 1 year of the Amended Judgment in accordance with requirements of 10 U.S.C. § 1448(b)(3).

After submission of this matter to this Office, on May 24, 1989, a Settlement, Compromise, Stipulation and Judgment was entered in the case of Peggy Minier v. Malinda Wimberly, Case Number 105100, Superior Court of the State of California, in which Peggy Minier was awarded all rights to the Survivor Benefit Plan benefits after the date of the Judgment. Malinda Wimberly was awarded all rights to the Plan benefits up to the date of the Judgment. This action was brought by Peggy against Malinda, as successor in interest to Colonel Wimberly, for enforcement of the Amended Judgment of Dissolution of September 7, 1984.

ANALYSIS AND CONCLUSION

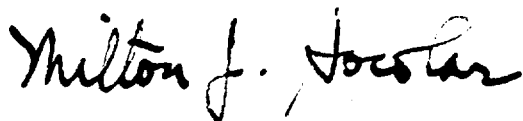
The Survivor Benefit Plan, 10 U.S.C. § 1447-1455, was established by Congress in 1972 as an income maintenance program for dependents of deceased members of the uniform services. See Pub. L. No. 92-425, 86 Stat. 706 (1972). At the time of the enactment, there was no authority for coverage of a former spouse and upon a divorce a retired member's former spouse could no longer be covered under the Plan.

In 1983 the Plan was amended to provide eligible members the option of designating a former spouse as beneficiary

if the member had elected coverage initially for a spouse and later divorced that spouse. The election would have to be made within 1 year of the effective date of the Act or within 1 year of the divorce if the divorce took place after the passage of the Act. To make such an election it was necessary for the member to provide the appropriate Secretary with a voluntary written agreement to provide former spouse coverage as well as the election. See Pub. L. No. 98-94, § 941, 97 Stat. 614, 652-654 (1983), codified as amended at 10 U.S.C. §§ 1447-1448 and 1450 (Supp. I 1983).

In 1986 the law was again amended to provide that if a court had ordered the member to make an election for Plan coverage for a former spouse, the Secretary could deem that an election had been made if the Secretary received such a request from a former spouse. Pub. L. No. 99-661, § 641, 100 Stat. 3816, 3885-3886 (1986), codified as amended at 10 U.S.C. § 1450(f) (Supp. IV 1986).

At the time the election was received by the Air Force there was no authority in the law for the Secretary to deem that an election had been made on the basis of a court ordering a member to make the former spouse election. However, as noted earlier, the court in the initial proceeding retained jurisdiction over the Survivor Benefit Plan election issue. Thus, when the court approved the agreement between the parties in the latest action by its order of May 24, 1989, the law had been changed to provide that the Secretary concerned could deem that an election had been made when a court ordered the member to make the election. Thus, on receipt of a request for a deemed election, the Air Force should deem that an election had been made in favor of Ms. Minier as of May 24, 1989. Any other matters involved here were resolved by an agreement between the parties that was approved by the court and which is consistent with applicable law.



Acting Comptroller General
of the United States